

Interim Guidance on the use of Race and Ethnic Categories in Affirmative Action Programs

Beginning in 2007, employers, including Federal contractors, will report data about the racial, ethnic, and gender composition of their workforces on a revised Standard Form 100, Employer Information Report (commonly referred to as the "EEO-1 Report"). The revised EEO-1 Report must be filed for the first time by September 30, 2007.

The existing EEO-1 Report calls for workforce data to be broken down by nine job categories, using five race and ethnic categories. The revised EEO-1 Report changes the race and ethnic categories by adding a new category titled "two or more races" and dividing the category "Asian or Pacific Islander" into two separate categories - "Asian" and "Native Hawaiian or other Pacific Islanders." In addition, the approved revisions divide the Officials and Managers job category into two subgroups - Executive/Senior Level Officials and Managers and First/Mid Level Officials and Managers. More information about the revised EEO-1 Report, including a series of frequently asked questions and answers, may be found on the Equal Employment Opportunity Commission's website at <http://www.eeoc.gov/eo1/index.html>.

OFCCP currently requires contractors to collect and maintain information about the gender, race, and ethnicity of their employees in the five race and ethnic categories used on the previous EEO-1 Report: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. In light of the changes to the EEO-1 Report, OFCCP is drafting proposed amendments to the recordkeeping and affirmative action program (AAP) regulations at 41 CFR parts 60-1 and 60-2 designed to require the use of consistent race and ethnic categories in the Executive Order 11246, as amended (Executive Order) program. The agency plans on publishing its proposed regulatory changes in the Federal Register for a sixty-day public comment period in the near future. The agency will review and consider the public comments before deciding on the final race and ethnic categories contractors will be required to use under the Executive Order.

OFCCP understands that many contractors already have taken significant steps to develop and implement new data systems for collecting and reporting the race and ethnicity data required by the revisions to the EEO-1 Report, while other contractors have either delayed implementation, awaiting further instructions from the OFCCP, or faced difficulty in making the required system changes. OFCCP also recognizes that contractors will need to begin collecting data under these new standards before they are able to use such data in their AAPs and other records produced during compliance evaluations.

Accordingly, until final rules and guidance are provided by OFCCP, as a matter of enforcement discretion, the agency will not cite a contractor for non-compliance solely because it utilizes the race and ethnic categories required by the revised EEO-1 Report when preparing its AAP. Contractors also are permitted to prepare their AAP using the racial and ethnic categories provided under OFCCP's current regulations.

Nothing in this interim guidance is intended to prohibit more detailed data collection by a contractor. Thus, contractors are free to collect and maintain more detailed demographic data than is required to complete the revised EEO-1 Report. OFCCP commends efforts by contractors to collect and analyze workforce data in a manner that allows them to meaningfully examine their progress towards equal employment opportunity.

This announcement also has no effect on how the agency will examine a contractor's overall good faith efforts, or its compliance with recordkeeping, nondiscrimination or

affirmative action requirements, beyond the above interim enforcement guidance. OFCCP will continue to rely on Census data, labor market data, or other information to assess a contractor's employment practices when the contractor has not maintained sufficiently detailed information regarding the effect of its employment practices on minorities and women.